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HOUSE BILL 40

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

John A. Heaton

AN ACT

**RELATING TO PUBLIC EMPLOYEES; CLARIFYING THE DEFINITION OF
"PUBLIC EMPLOYER" IN THE PUBLIC EMPLOYEES RETIREMENT ACT;
AMENDING A SECTION OF THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987,
Chapter 253, Section 2, as amended) is amended to read:**

**"10-11-2. DEFINITIONS.--As used in the Public Employees
Retirement Act:**

**A. "accumulated member contributions" means the
amounts deducted from the salary of a member and credited to
the member's individual account, together with interest, if
any, credited to that account;**

**B. "affiliated public employer" means the state and
any public employer affiliated with the association as provided**

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1 in the Public Employees Retirement Act, but does not include an
2 employer pursuant to the Magistrate Retirement Act, the
3 Judicial Retirement Act or the Educational Retirement Act;

4 C. "association" means the public employees
5 retirement association established under the Public Employees
6 Retirement Act;

7 D. "disability retired member" means a retired
8 member who is receiving a pension pursuant to the disability
9 retirement provisions of the Public Employees Retirement Act;

10 E. "disability retirement pension" means the
11 pension paid pursuant to the disability retirement provisions
12 of the Public Employees Retirement Act;

13 F. "educational retirement system" means that
14 retirement system provided for in the Educational Retirement
15 Act;

16 G. "employee" means any employee of an affiliated
17 public employer;

18 H. "federal social security program" means that
19 program or those programs created and administered pursuant to
20 the act of congress approved August 14, 1935, Chapter 531, 49
21 Stat. 620, as that act may be amended;

22 I. "final average salary" means the final average
23 salary calculated in accordance with the provisions of the
24 applicable coverage plan;

25 J. "form of payment" means the applicable form of

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1 payment of a pension provided for in Section 10-11-117 NMSA
2 1978;

3 K. "former member" means a person who was
4 previously employed by an affiliated public employer, who has
5 terminated that employment and who has received a refund of
6 member contributions;

7 L. "fund" means the funds included under the Public
8 Employees Retirement Act;

9 M "member" means a currently employed,
10 contributing employee of an affiliated public employer, or a
11 person who has been but is not currently employed by an
12 affiliated public employer, who has not retired and who has not
13 received a refund of member contributions; "member" also
14 includes the following:

15 (1) "adult correctional officer member" means
16 a member who is an adult correctional officer or an adult
17 correctional officer specialist employed by a correctional
18 facility of the corrections department or its successor agency;

19 (2) "hazardous duty member" means a member who
20 is a juvenile correctional officer employed by the children,
21 youth and families department or its successor agency;

22 (3) "municipal detention officer member" means
23 a member who is employed by an affiliated public employer other
24 than the state and who has inmate custodial responsibilities at
25 a facility used for the confinement of persons charged with or

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1 convicted of a violation of a law or ordinance;

2 (4) "municipal fire member" means any member
3 who is employed as a full-time nonvolunteer firefighter by an
4 affiliated public employer and who has taken the oath
5 prescribed for firefighters;

6 (5) "municipal police member" means any member
7 who is employed as a police officer by an affiliated public
8 employer, other than the state, and who has taken the oath
9 prescribed for police officers; and

10 (6) "state police member" means any member who
11 is an officer of the New Mexico state police and who has taken
12 the oath prescribed for such officers;

13 N. "membership" means membership in the
14 association;

15 O. "pension" means a series of monthly payments to
16 a retired member or survivor beneficiary as provided in the
17 Public Employees Retirement Act;

18 P. "public employer" means the state, any
19 municipality, city, county, metropolitan arroyo flood control
20 authority, economic development district, regional housing
21 authority, soil and water conservation district, entity created
22 pursuant to a joint powers agreement, council of government,
23 conservancy district, irrigation district, water and sanitation
24 district, water district and metropolitan water board,
25 including the boards, departments, bureaus and agencies of a

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1 public employer, so long as these entities fall within the
2 meaning of governmental plan as that term is used in Section
3 414(d) of the Internal Revenue Code of 1986, as amended;

4 Q. "refund beneficiary" means a person designated
5 by the member, in writing, in the form prescribed by the
6 association, as the person who would be refunded the member's
7 accumulated member contributions payable if the member dies and
8 no survivor pension is payable or who would receive the
9 difference between pension paid and accumulated member
10 contributions if the retired member dies before receiving in
11 pension payments the amount of the accumulated member
12 contributions;

13 R. "retire" means to:

14 (1) terminate employment with all employers
15 covered by any state system or the educational retirement
16 system; and

17 (2) receive a pension from a state system or
18 the educational retirement system;

19 S. "retired member" means a person who has met all
20 requirements for retirement and who is receiving a pension from
21 the fund;

22 T. "retirement board" means the retirement board
23 provided for in the Public Employees Retirement Act;

24 U. "salary" means the base salary or wages paid a
25 member, including longevity pay, for personal services rendered

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1 an affiliated public employer. "Salary" shall not include
2 overtime pay, allowances for housing, clothing, equipment or
3 travel, payments for unused sick leave, unless the unused sick
4 leave payment is made through continuation of the member on the
5 regular payroll for the period represented by that payment, and
6 any other form of remuneration not specifically designated by
7 law as included in salary for Public Employees Retirement Act
8 purposes. Salary in excess of the limitations set forth in
9 Section 401(a) (17) of the Internal Revenue Code of 1986, as
10 amended, shall be disregarded. The limitation on compensation
11 for eligible employees shall not be less than the amount that
12 was allowed to be taken into account under the state retirement
13 system acts in effect on July 1, 1993. For purposes of this
14 subsection, "eligible employee" means an individual who was a
15 member of a state system before the first plan year beginning
16 after December 31, 1995;

17 V. "state system" means the retirement programs
18 provided for in the Public Employees Retirement Act, the
19 Magistrate Retirement Act and the Judicial Retirement Act;

20 W. "state retirement system acts" means
21 collectively the Public Employees Retirement Act, the
22 Magistrate Retirement Act, the Judicial Retirement Act and the
23 Volunteer Firefighters Retirement Act; and

24 X. "survivor beneficiary" means a person who
25 receives a pension or who has been designated to be paid a

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pension as a result of the death of a member or retired member. "